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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARCO PEREZ,

Plaintiff,

No. CIV S-06-1209 JAM GGH P

vs.

D.L. RUNNEL, et al.,

Defendants.

FINDINGS & RECOMMENDATIONS

_____ /

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. The only remaining defendant is J. W. Rohlfig. For the following reasons, the court recommends that the claims against this defendant be dismissed and this action be dismissed.

On July 11, 2007, the court ordered the U.S. Marshal to serve the complaint on defendants. Process directed to defendant Rohlfig was returned unserved because “not at facility.” On May 5, 2008, the court granted plaintiff sixty days to locate defendant and return the forms necessary to effect service. On July 2, 2008, plaintiff resubmitted the documents necessary to effect service. On July 25, 2008, the court ordered the U.S. Marshal to re-attempt service of this defendant. On October 8, 2008, process directed to defendant Rohlfig was returned unserved again because defendant is not employed at High Desert State Prison, where

1 plaintiff directed process served. In addition, a note from the U.S. Marshal on the returned
2 USM-285 form stated that per CDC Locator, there is no J.W. Rohlfing in the database.

3 On October 29, 2008, the court ordered plaintiff to show cause why the claims
4 against defendant Rohlfing should not be dismissed. On December 1, 2008, plaintiff filed a
5 pleading requesting thirty days to locate defendant Rohlfing through the Executive Office of the
6 California Medical Board. On December 16, 2008, the court granted this request and ordered
7 plaintiff to submit the forms necessary to effect service of defendant within forty-five days.

8 On January 22, 2009, plaintiff filed a declaration stating that he has not been
9 given law library access. However, plaintiff goes on to state that “plaintiff was just not able to
10 locate Dr. J.W. Rohlfing.” January 22, 2009, pleading, ¶ 7. Plaintiff states that he can only
11 locate defendant through discovery. However, because all other defendants have been dismissed
12 plaintiff cannot utilize discovery to locate defendant.

13 Attached to plaintiff’s January 22, 2009, pleading is a letter to plaintiff dated
14 December 8, 2008, from the Medical Board of California stating that “we are unable to locate the
15 doctor,” presumably defendant Rohlfing, “in our database.”

16 Plaintiff has been granted adequate opportunity to locate defendant Rohlfing.
17 Plaintiff’s recent lack of law library access has not impeded his ability to locate this defendant.
18 Because plaintiff cannot locate defendant Rohlfing, the claims against this defendant should be
19 dismissed.

20 Accordingly, IT IS HEREBY RECOMMENDED that:

- 21 1. The claims against defendant Rohlfing be dismissed;
- 22 2. This action be dismissed.

23 These findings and recommendations are submitted to the United States District
24 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty
25 days after being served with these findings and recommendations, any party may file written
26 objections with the court and serve a copy on all parties. Such a document should be captioned

1 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections
2 shall be served and filed within ten days after service of the objections. The parties are advised
3 that failure to file objections within the specified time may waive the right to appeal the District
4 Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

5 DATED: February 2, 2009

6
7 /s/ Gregory G. Hollows

8 UNITED STATES MAGISTRATE JUDGE

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